

**Before the
Federal Communications Commission
Washington, DC**

In the Matter of:)	
)	
Request for Review of the Decision of the)	
Universal Service Administrator by)	
)	
KIPP, Inc.)	File No: SLD-433110
Houston, Texas)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

REQUEST FOR REVIEW OR WAIVER

On May 16, 2011, KIPP, Inc. ("KIPP") filed a Request for Review¹ in which it requested the Commission to (1) waive its 60-day appeal rule, because KIPP never received a copy of USAC's Commitment Adjustment Decision ("COMAD"); (2) order USAC to reissue the COMAD, which would give KIPP the 60-day appeal period to which it is entitled under the Commission's rules; and (3) order USAC to terminate its collections efforts against KIPP immediately in connection with FRN No. 1205994.

To avoid any further delay, KIPP, by its representative, hereby appeals the Commitment Adjustment Decision ("COMAD") of the Schools and Libraries Division of the Universal Services Administrative Company ("USAC") to reduce the amount of E-rate funding that USAC committed to KIPP in Funding Commitment ("FRN") No. 1206994.

¹ KIPP, Inc. (BEN 216840) Request for Waiver and Review. File No. SLD- 433110. Filed May 16, 2011.

FULL TEXT OF THE COMAD DECISION

Funding Commitment Adjustment Report Form 471 Application Number: 433110

Funding Request Number:	1205994
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143030052
Service Provider Name:	Calence, LLC
Contract Number:	2118728
Billing Account Number:	N/A
Site Identifier:	216840
Original Funding Commitment:	\$268,294.93
Commitment Adjustment Amount:	\$268,294.93
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$154,619.31
Funds to Be Recovered from Applicant:	\$154,619.31

During the course of an audit it was determined that the applicant signed a contract with the service provider prior to the expiration of 28-day posting period. FCC rules require that, except under limited circumstances, all Forms 470 received be posted on the USAC web site for 28 days, and that applicants carefully consider all bids received before selecting a service provider, entering into an agreement, or signing a contract, and signing and submitting a Form 471. In the Receipt Notification Letter, USAC notified the applicant that the earliest date upon which they could sign a contract or enter into an agreement (Allowable Contract Date) was February 3, 2004. Based on the documentation provided, it cannot be determined if the service provider was selected after the 28 days. Since it cannot be determined if the service provider was selected after the required 28-day posting period, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds.

BACKGROUND

USAC decided to rescind \$154,619 in E-rate support to KIPP because the charter school could not, according to USAC, prove that it had waited the mandatory 28 days from the filing of the Form 470 before entering into a contract with Calence (then Avnet) ("Service Provider"). More specifically, USAC concluded that, since KIPP could not provide a copy of the signed contract with the Service Provider, it had to conclude that KIPP did not wait the mandatory 28 days after the filing of the Form 470 before selecting a service provider. USAC's conclusion is incorrect. KIPP did wait the mandatory 28 days, and that was certainly a conclusion that USAC could have reached.

USAC reached its inaccurate conclusion by selectively dismissing the unique circumstances that surrounded the initial procurement of the services as well as the documentation available and provided in the audit to KPMG.

Even though the complete, signed agreement for the services in question could not be located, that cannot change the fact that there was one, and, moreover, that KIPP adhered to the

program's rule of waiting the mandatory 28 days before entering into it. The *Affidavit of Ulysses Soria*, attached hereto as Exhibit 1, supports this fact, as well as all of the facts set forth below.

FACTS

On January 6, 2004, KIPP posted and certified Form 470 No. 1740020000458238 seeking Internal Connections services including cabling, data communication equipment, and maintenance and technical support. During the 28-day waiting period that followed, KIPP did not receive any bids for the Internal Connections services requested in the Form 470. Because it had not received any bids, KIPP had no choice but to solicit bids directly. As a result of its efforts, Calence submitted one. After considering it and finding it to be reasonable and cost effective, KIPP reached an agreement with the company to perform the work, signed a contract (a one page acceptance form), and filed Form 471 No. 433110.

In 2008, KPMG audited KIPP and, during that audit, asked to see the Calence contract. Because of personnel and location changes that KIPP had experienced before 2008, KIPP's staff at the time of the audit could not find the signed, one-page contract acceptance form. (*Soria Affidavit* at paras. 10-11.) KIPP was able to provide, however, the Scope of Work documentation for the FY2004 cabling project that had been part of the contract.

DISCUSSION

At the crux of this appeal is a single issue – whether the inability to produce a contract is enough to establish that an applicant failed to wait the mandatory 28 days after filing the Form 470 prior to entering into a contract with a service provider and filing the Form 471. We submit that it is not, especially where, as here, there is strong, credible evidence to the contrary.

A. The Parties Signed a Contract on the 29th Day of the Posting Period

KIPP recognizes how important it is to adhere to the E-rate program's document retention requirements, and it has taken affirmative steps since the time of the audit to ensure that no important documents go missing. No doubt it would have been better had KIPP been able to produce a complete copy of the contract, but that absence alone should not carry more weight than evidence that there was no posting period violation, which is strong and credible. Note that

KIPP supplied a signed Scope of Work during the KPMG audit, which outlined the specific work to be performed, and throughout the Funding Year, both parties acted in accordance with the terms and conditions set forth in their written agreement, supplying and paying for work performed. Finally, and most important, Ulysses Soria, KIPPS current Director of Technology, who was employed by KIPP part time in a different capacity at the time of the contracting, states that the parties signed their agreement “29 days after posting [the] Form 470.” (*Soria Affidavit* at para. 8). Soria’s statement is direct and unequivocal. USAC’s conclusion, on the other hand, rests entirely on speculation. On balance, therefore, we submit that the evidence that there was no posting period violation outweighs whatever inference might be drawn from the absence of the complete contract document.

B. To Have a Competitive Bidding Violation, There Must First be *Competition*

The E-rate program’s policies and rules are designed to promote competition among service providers and to give applicants the most cost effective means to receive telecommunications and Internet services as a result. One way that the program ensures this process is through the mandatory 28-day wait after posting the Form 470 before selecting a service provider. This gives all service providers the opportunity to bid on services requested on the Form 470 and be fairly evaluated by the applicant.

In KIPP’s case, there has not, and could not, have been a competitive bidding violation since the district did not receive multiple bids to evaluate. When KIPP did not receive any bids it had to go out and actively solicit them. Therefore, even if KIPP had signed a contract before the end of the 28-day posting period, which it did not, the violation would have been at most “technical” and certainly not anti-competitive.

KIPP evaluated the one bid received through its solicitation efforts on the basis of cost effectiveness and, as the information that Mr. Soria provided in his affidavit establishes, did not enter into a contract with the Service Provider until after the 28 day waiting period.

C. Alternatively, The Circumstances Warrant a Waiver

If the Commission concludes that KIPP’s inability to produce a copy of its contract is enough to establish a posting period violation, then KIPP respectfully requests that the

Commission waive this rule, as it would certainly be in the public interest to do so. As discussed above, a violation of this sort, in these circumstances, would have been nothing more than “technical.” The Form 470 did not generate any bids; indeed, to secure a service provider, KIPP had to actively seek one out – outside of the Form 470 process. Ultimately, KIPP secured a cost effective solution to its E-rate contracting needs, and, in so doing, did not treat any company unfairly or violate any other program rule. Furthermore, there is no evidence or allegation of any waste, fraud or abuse in connection with this or any other procurement.

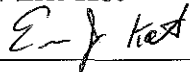
KIPP is doing its best to provide quality education to children from some of our nation’s most impoverished families and, at the same time, to follow E-rate program’s many and varied rules and regulations. Finding a posting period rule violation in these circumstances and forcing KIPP to repay such a large sum of money as a result would be extremely unfair to KIPP and, ultimately, to its students.

CONCLUSION

The evidence shows that KIPP waited the mandatory 28 days after posting a Form 470 before entering into a contract with the Service Provider. Furthermore, because KIPP received only one bid, it could not possibly have committed a competitive bidding violation. Therefore, the COMAD decision should be reversed and funding restored to FRN 1205994.

Respectfully submitted,

/s/ Eric Kot



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Date: June 15, 2011

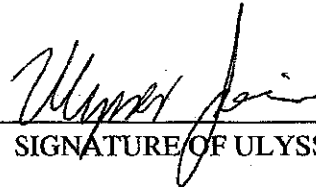
EXHIBIT 1

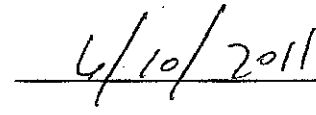
DECLARATION OF ULYSSES SORIA

I, Ulysses Soria, hereby declare and affirm that the following statements are true and correct.

1. I am over 18 years of age and competent to testify to the matters described herein.
2. I am currently employed as the Director of Technology for KIPP, Inc ("District") and have been with the District since 1999.
3. I am currently the District's designated E-rate specialist. In this full-time capacity, I am responsible for, among other things, preparing and maintaining all of the District's E-rate related forms.
4. Catherine North was the contact and authorized signer for Funding Year 2004. I was employed part-time by the District at the time and was in a position to observe the bidding process as it occurred.
5. Form 470 No. 174002000458238 was posted and certified on January 6, 2004.
6. During the mandatory 28 waiting period, only one bid for Internal Connections was received.
7. In order to receive the one bid, the District reached out to Avnet (now Calence) ("provider") requesting a bid for services. This requested bid was the only bid received for Internal Connections.
8. On February 4, 2004, 29 days after posting Form 470 No. 174002000458238, the District reviewed the bid from the provider for cost effectiveness, signed the agreement page included with the bid, and notified Avnet that they were the selected service provider for Internal Connections.
9. Form 471 No. 433110 was completed, certified in-window by Catherine North and mailed to the SLD on February 4, 2004.
10. Later, three separate events set the audit findings from the 2008 audit into motion. First, Catherine North, whom was responsible for preparing and maintaining the District's E-rate documentation resigned from her position and left the District; Second, the District grew from one site, to 11 sites from 2004 to 2008, and; Third, Avnet was acquired by Calence in 2005.

11. The first two events resulted in the District misplacing and thus not being able to produce a copy of the service agreement for Funding Year 2004. The third, the contributed to the service provider not being able to produce a copy of the contract.
12. The District was audited in 2008, and received a monetary finding for not being able to provide sufficient evidence (signed agreement) that the District waited at least 28 days before filing the Form 470 before selecting a service provider or awarding a contract.
13. Currently all documentation, including signed contracts, is stored physically at KIPP, Inc and electronically on the E-rate Manger Website. The electronic storing of documents of KIPP, Inc property provides a back-up system of documentation that guards against the misplacement of physical documents created due to staff turnover or relocation.


SIGNATURE OF ULYSSES SORIA


DATE

WITNESS:

Signature:



Print Name:

NOE ROMO

Date:

6/10/2011